

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 95-835-C - ORDER NO. 96-197✓
APRIL 2, 1996

IN RE: Request of AT&T Communications to Implement) ORDER
1+ and 0+ Presubscription for IntraLATA) GRANTING
Toll Service.) PETITION
) IN PART

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition filed by AT&T Communications of the Southern States, Inc. (AT&T or the Company) requesting implementation of intraLATA equal access (1+ and 0+ presubscription) for intraLATA toll service in South Carolina.

In a letter to the Company, the Executive Director of the Commission instructed AT&T to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The Notice of Filing documented the nature of this proceeding and informed interested parties of the time and manner in which to intervene. AT&T certified that it had complied with the Executive Director's instructions. The Commission received Petitions to Intervene from the South Carolina Department of Consumer Affairs (the Consumer Advocate), the South Carolina Public Communications Association (SCPCA), Sprint Communications Company (Sprint), GTE South, Inc. (GTE), MCI Telecommunications Corporation

(MCI), the South Carolina Telephone Association (SCTA), the South Carolina Telephone Coalition (SCTC or the Coalition), BellSouth Telecommunications, Inc. (BellSouth) and United Telephone, Inc. (United). United Telephone subsequently announced that it was not going to participate in the hearing on the matter.

A hearing was duly commenced at 2:30 p.m. on November 28, 1995 in the Commission's hearing room with the Honorable Rudolph Mitchell, Chairman, presiding. AT&T was represented by Francis P. Mood, Esq. and Roger Briney, Esq. Sprint Communications Company was represented by Benjamin W. Fincher, Esq. and Darra W. Cothran, Esq. BellSouth Telecommunications, Inc. was represented by Harry M. Lightsey, III, Esq., William F. Austin, Esq. and Nancy White, Esq. The Consumer Advocate for the State of South Carolina was represented by Elliott F. Elam, Jr., Esq. GTE was represented by A. Randall Vogelzang, Esq. MCI was represented by Martha McMillin, Esq. and John M.S. Hoefer, Esq. The South Carolina Association and the South Carolina Telephone Coalition were represented by M. John Bowen, Jr., Esq. and Margaret Fox, Esq. The South Carolina Public Communications Association was represented by John F. Beach, Esq. The Commission Staff was represented by F. David Butler, General Counsel and Catherine D. Taylor, Staff Counsel.

The Petitioner, AT&T, presented the testimony of G. Wayne Ellison. Sprint Communications Company presented the testimony of Michael J. Nelson. BellSouth Telecommunications, Inc. presented the testimony of Wayne Gray, Reginald E. Starks and Joseph A. Stanley, Jr. The Consumer Advocate presented no witnesses. GTE

presented the testimony of Janice A. Varvel, John R. King, Douglas E. Wellemeyer and Edward C. Beauvais. Neither MCI nor the South Carolina Telephone Association presented any witnesses. The South Carolina Telephone Coalition presented the testimony of Emmanuel Staurulakis. The South Carolina Public Communications Association presented the testimony Clifton Craig. The Commission Staff presented the testimony of James M. McDaniel.

II. DISCUSSION

The fundamental issue in this Docket is that of whether and when intraLATA presubscription is in the public interest. As noted by Bell witness Stanley, the telecommunications industry is currently undergoing radical change. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (the Act). This law provides for the nearly simultaneous opening of the intraLATA markets to interexchange carriers (IXC's) and the interLATA markets to local exchange companies (LECs). While affirming the concept of intraLATA presubscription in the form of dialing parity, the legislation also held that a state may not require a Bell Operating Company (BOC) to implement intraLATA toll dialing parity in that state before the Bell Operating Company had been granted authority under the Act to provide interLATA services originating in that state, or 3 years after the date of enactment of the Act, whichever, is earlier.

At the present time, before a consumer may utilize one of the interexchange carriers, such as AT&T, to place an intraLATA long distance call, that consumer must use a 5 digit (10XXX) prefix code

in order to reach an IXC carrier of choice. AT&T petitions this Commission to be allowed to remove this requirement, alleging that it would eliminate a substantial barrier to intraLATA toll competition and take another step towards realization of the benefits of a competitive telecommunications marketplace.

AT&T states its belief that greater competition produces benefits to consumers in terms of greater choices tailored to meet individual customer needs, such as accelerated improved operating efficiencies on the part of incumbent service providers, greater responsiveness to customers needs, and lower prices. Sprint submitted that 1+/0+ intraLATA presubscription is in the public interest and that it will benefit South Carolina consumers and will further the public interest through the creation of a competitive marketplace. Sprint, through the testimony of witness Nelson, outlines four further benefits to the granting of AT&T's Petition:

1. South Carolina consumers will have more freedom of choice and will be able to choose alternative service providers for their intraLATA toll calls on a presubscribed basis.
2. A competitive intraLATA marketplace will provide an immediate incentive for telecommunications firms to offer the highest quality and innovative services at reasonable prices.
3. South Carolina consumers can expect to see a greater variety of service offerings at lower prices.
4. A competitive environment as would be created by the Commission authorizing intraLATA presubscription would permit the

Commission to rely to some degree on the competitive market forces to regulate prices, service and quality. Sprint alleges that, to the extent that competition provides a surrogate for administrative and regulatory oversight, South Carolina consumers will benefit and the Commission can devote its resources to other regulatory matters.

The concerns of two intervenors opposing 1+ and 0+ intraLATA toll presubscription, BellSouth and GTE, centered on the potential effect that the competition would have on local rates. The South Carolina Telephone Coalition also opposed intraLATA presubscription, unless this Commission deemed it to be in the public interest, and made it subject it to some specified conditions. SCTC also states that the cost of implementing intraLATA equal access should be born only by the interexchange carriers (See Tr. Vol. 4, at 113 and 114). The view of BellSouth is that it would be unfair to permit interexchange carriers to provide pre-subscribed intraLATA toll services because IXCs could provide one stop long distance shopping, while Bell could not, thus giving the IXCs a competitive advantage. Therefore, BellSouth recommended that the Commission await the outcome of the pending federal legislation before making any decisions regarding the implementation of 1+ intraLATA presubscription. Subsequent to the hearing, the Telecommunications Act of 1996 was signed into law by President Clinton, which simultaneously opened up both the interLATA markets to the LECs and the intraLATA markets to the IXCs. The one exception to this, however, in terms of dialing

parity, was BellSouth. The law held that no state Commission could order BellSouth to implement dialing parity until BellSouth entered the interLATA market or until 3 years had lapsed from the date of passage of the Act. BellSouth subsequently filed a Motion to Dismiss or in the alternative, a Motion to Hold the Proceeding in Abeyance, based on this provision of the law.

Similarly, GTE offered testimony recounting the significant marketing disadvantage it would face in competing against interexchange carriers offering bundled interLATA and intraLATA services, which GTE could not offer. Therefore, like BellSouth, GTE supported the implementation of 1+ and 0+ intraLATA presubscription "linked with the entry of GTE South into the interLATA market" (See Tr. Vol. 3 at 68).

It appears that the federal legislation has satisfied the stated requirements of both parties, but for the temporary ban on dialing parity for BellSouth. The Telecommunications Act of 1996 requires that all local exchange carriers "... provide dialing parity to competing providers of telephone exchange service and telephone toll service..." Section 251, (b) (3) of the 1996 Act. The 1996 Act lifts the restrictions on GTE's provision of interLATA toll services by making future conduct subject to the terms of the 1996 Act, rather than GTE consent Decree (See Section 601, (a) (2) of the Act).

Both GTE and BellSouth presented testimony reading the various functions that must be carried out by the LEC's in order to implement intraLATA equal access. BellSouth estimates that

preparations would take about twelve (12) months to complete. See Tr. Vol. 4 at 70.

In contrast to BellSouth's and GTE's testimony was that of the various parties supporting intraLATA equal access. AT&T witness Ellison testified that the primary beneficiaries of intraLATA equal access would be South Carolina residential and small business users, because these customers will no longer have to input the extra digits required today, and could take advantage of competitive offerings at the large business presently have as result of their ability to use dedicated access and PBXs, which can automatically input the additional digits. Mr. Ellison also testified that implementing intraLATA equal access is feasible and obtainable and is not a costly undertaking. The South Carolina Public Communications Association noted that authorizing intraLATA equal access would eliminate customer confusion regarding where all LATA boundaries begin and end.

The South Carolina Telephone Coalition presented the testimony of Emmanuel Staurulakis, who stated that the Coalition opposes the Petition, however, should the Commission adopt intraLATA equal access, four criteria should be observed:

1. IntraLATA equal access should only be implemented in exchanges where an interexchange carrier submits a bona fide request for it; (It should be noted that this requirement is consistent with the terms of Section 251-(f)(1)(A) of the Telecommunications Act of 1996.)

2. There should be a showing permitted of the technical or

economic unfeasibility, on an exchange-by-exchange basis and company-by-company basis, of implementing intraLATA equal access, with the final decision to be made by this Commission; (This is consistent with Section 254 of the Act.)

3. All carriers should be permitted to decide the scope of their toll service offerings;

4. It should be required that all toll providers charge prices for subscribers in rural and high cost areas no higher than the rates charged by each such provider to its subscribers in urban areas.

In its brief, the Coalition modified slightly its last two criteria. First, SCTC stated that all cost incurred by LECs in implementing intraLATA equal access should be recoverable from the IXCs who benefit from implementation. Second, according to SCTC, this Commission should ensure that there is a carrier of last resort for intraLATA toll traffic in small LEC service areas to avoid the creation of widespread disparate toll rates. SCTC also noted that balloting should only be required in those areas that have not yet converted to interLATA equal access. Although SCTC stated in its brief that mandatory implementation of intraLATA presubscription should be denied, that in the event the Commission determines that intraLATA presubscription is in the best interest of the public, that the Commission should place the stated conditions on the implementation of intraLATA presubscription to

ensure that it is carried out in an equitable manner, and is not unduly burdensome to the local exchange carriers or to their customers.

III. FINDINGS AND CONCLUSIONS

We have examined the evidence in this case and the record as a whole, and find that both the evidence and the record demonstrate the significant benefits which South Carolina consumers would realize from intraLATA equal access. We believe, as does AT&T, that the passage of federal legislation now makes it all the more appropriate to order intraLATA equal access. IntraLATA equal access in South Carolina will permit the same kind of benefits which have resulted from competition in the interLATA market. AT&T real prices in the interLATA market have dropped 60% from 1984 to 1994; and AT&T's share of the market, which was 100% of all calling in 1984, is now approximately 60% of the interLATA interexchange market (See Tr. Vol. 2 at 44). Under the new Act, GTE and United are now unincumbered from any prohibition on offering interLATA services. We also believe that South Carolina consumers will be able to enjoy all the advantages as cited in the testimony of Michael Nelson of Sprint, that is, freedom of choice, market place incentives for all firms, increased variety of services and service providers, and administrative ease.

Although we deny BellSouth's Motion to Dismiss or in the alternative, to Hold in Abeyance this proceeding, we do realize that the Telecommunications Act of 1996 does not allow us to order immediate intraLATA presubscription implementation by BellSouth

Telecommunications, Inc.

Accordingly, we hold that all local exchange carriers in South Carolina, except BellSouth Telecommunications, Inc., shall implement 1+ and 0+ presubscription for intrastate intraLATA toll service by July 1, 1997. We hold in abeyance any ruling as to BellSouth. The costs of implementation incurred by GTE and United should be recovered from the IXCs who benefit from its implementation. These costs should be recovered within one year of conversion. For all LEC's which are members of the South Carolina Telephone Coalition, the conditions proposed by the Coalition witness in this proceeding, and amended by the Coalition's brief, concerning 1+/0+ presubscription are adopted as follows:

1. Implementation should be required only if and when an interexchange carrier has submitted a bona fide request for intraLATA service.

2. Implementation should be required only where it is technically and economically feasible:

3. All costs incurred by Coalition members in implementing intraLATA equal access should be recovered from IXCs who benefit from its implementation. These costs should be recovered within one year of conversion.

4. The Commission shall ensure that there is a carrier of last resort for intraLATA toll traffic in the small LEC service areas to avoid the creation of widespread toll rates and/or significant financial dislocations, and to avoid the need to develop special contractual arrangements among the LECs which would

be burdensome from an administrative standpoint and which is also inconsistent with equal access policies.

Further, we hold that any LEC may petition the Commission for an exemption, due to technical or economical reasons, prior to the July 1, 1997 implementation date of this Order. Further, with regard to balloting when presubscription is implemented, balloting should only be required in those areas that have not yet converted to interLATA equal access.

Whereas, we recognize concerns expressed regarding the effect that intraLATA equal access would have on LEC revenues, we agree with the Consumer Advocate's statement that in those instances when the LEC can provide interLATA services, equal access is the only competitively fair scenario. Further, we also agree with the Consumer Advocate's statement that where the LEC is only an access provider, there should be little or no difference in the LEC revenues from the sale of access, whether the toll provider is BellSouth or an interexchange carrier.

We believe that our Order in this case is consistent with the provisions of the Telecommunications Act of 1996, and with the competitive atmosphere which it fosters. We believe that South Carolina consumers are entitled to the same advantages as consumers in other states, with regard to telecommunications, and we feel that intraLATA presubscription is certainly one of those benefits. We also believe that the granting of 1+ and 0+ presubscription

further the goal of promoting competition in the telecommunications industry today. We therefore grant AT&T's Petition in part as delineated above.

This Order shall remain in full force and effect until further Order by the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)